

1 Jerry L. Steering (SBN 122509)
2 Law Offices of Jerry Steering
3 4063 Birch Street, Suite 100
4 Newport Beach, California 92660
5 (949) 474-1849
6 (949) 474-1883 Fax
7 jerrysteering@yahoo.com
8 Attorney for Plaintiffs Robert Harley Fisher and Paula Marie Fisher

9
10 **UNITED STATES DISTRICT COURT**
11
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 ROBERT HARLEY FISHER AND
15 PAULA MARIE FISHER,

16 Plaintiffs,

17 vs.

18 COUNTY OF SAN BERNARDINO,
19 LANCE D. HIGGINS, KEVIN ALLEN,
20 DONALD A. PATTON, JASON A.
21 COSTA, OSWALDO RODRIGUEZ,
22 JONATHAN THORP, JONATHAN
23 MILLARD, LINDSAY ELISE
24 CRISTOBAL, and DOES 1 through 10,
25 INCLUSIVE,

26 Defendants.
27
28

Case No.: 5:18-cv-00700

THIRD AMENDED COMPLAINT
FOR VIOLATIONS OF FEDERAL
CONSTITUTIONAL RIGHTS
UNDER COLOR OF LAW (42 U.S.C.
§ 1983); UNREASONABLE SEIZURE
OF PERSON (U.S. CONST. AMEND
IV); UNREASONABLE USE OF
FORCE (U.S. CONST. AMEND IV);
UNREASONABLE SEARCH AND
SEIZURE OF PROPERTY (U.S.
CONST. AMEND IV); DENIAL OF
SUBSTANTIVE DUE PROCESS OF
LAW (U.S. CONST. AMEND XIV);
RETALIATION FOR PROTECTED
SPEECH (U.S. CONST. AMEND I);
MALICIOUS PROSECUTION (U.S.
CONST. AMEND IV & XIV);
CALIFORNIA STATE LAW CLAIMS
FOR VIOLATION OF BANE ACT
(CAL. CIV. CODE § 52.1); FALSE
ARREST, CONVERSION, INVASION
OF PRIVACY, INTENTIONAL
INLICTION OF EMOTIONAL
DISTRESS
JURY TRIAL DEMANDED

1 **COME NOW** plaintiffs ROBERT HARLEY FISHER and PAULA
2 MARIE FISHER, and shows this honorable court the following:

3
4 **JURISDICTIONAL ALLEGATIONS**

5 1. As this action is brought under 42 U.S.C. § 1983, this court has
6 jurisdiction over this case under its federal question jurisdiction pursuant to 28
7 U.S.C. § 1331.

8 2. As the incidents complained of in this action occurred in the County
9 of San Bernardino, State of California, within the territorial jurisdiction of this
10 court, venue properly lies in this court pursuant to 28 U.S.C. § 1391(b)(2).

11 3. As plaintiffs' claims brought under California state law arise out of
12 the same transactions and occurrences and out of a common nucleus of operative
13 facts as the plaintiffs' federal questions claims, this court may exercise
14 supplemental jurisdiction over the plaintiffs' California state law claims pursuant
15 to 28 U.S.C. § 1367, and otherwise pursuant to *United Mine Workers of America*
16 *v. Gibbs*, 383 U.S. 715 (1966).

17 4. Plaintiffs timely filed their Claims For Damages against the County
18 of San Bernardino on or about August 22, 2017, pursuant to the California Tort
19 Claims Act, Cal. Gov't. Code § 900 et seq., and said claim has been denied by
20 defendant County of San Bernardino on or about October 5, 2017, less than six
21 months prior to the filing of this instant action.
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23
24 **GENERAL ALLEGATIONS**

25 5. Plaintiff Robert Harley Fisher, hereinafter referred to as "ROBERT
26 FISHER," is a natural person who, at all times complained of in this action,
27 resided in the State of California. Plaintiff Robert Fisher is/was the legal and
28

1 natural father of plaintiffs' minor children, "S.F." and "A.F." Plaintiff ROBERT
2 FISHER is also a full-time sworn peace officer / police Lieutenant with the
3 Banning Police Department in Banning, California.

4 6. Plaintiff PAULA MARIE FISHER, hereinafter referred to as
5 "PAULA FISHER," is a natural person who, at all times complained of in this
6 action, resided in the State of California. PAULA FISHER is the wife of plaintiff
7 ROBERT FISHER, and the legal and natural mother of minor children, "S.F." and
8 "A.F."

9 7. Plaintiffs' minor child, S.F., hereinafter referred to as "S.F.," is a
10 natural person who, at all times complained of in this action, was the legal and
11 natural daughter of her parents, plaintiffs ROBERT FISHER and PAULA
12 FISHER.

13 8. Plaintiffs' minor child, A.F., hereinafter referred to as "A.F.," is a
14 natural person who, at all times complained of in this action, was the legal and
15 natural son of his parents, plaintiffs ROBERT FISHER and PAULA FISHER.

16 9. Defendant County of San Bernardino, hereinafter also referred to as
17 "County of San Bernardino" or "COUNTY," is a political subdivision of the State
18 of California and is a municipal entity located within the territorial jurisdiction of
19 this Honorable Court.

20 10. Defendant Lance D. Higgins, hereinafter referred to as "HIGGINS,"
21 is, and was at all times complained of herein, employed as a full-time sworn
22 Deputy Sheriff with the San Bernardino County Sheriff's Department (hereinafter
23 "San Bernardino County Sheriff's Department" and/or "SBSD"). At all times
24 complained of herein, HIGGINS was acting as an individual person under the
25 color of state law, pursuant to his status as a Deputy Sheriff, and was acting in the
26 course of and within the scope of his employment with defendant County of San
27 Bernardino.
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1 11. Defendant Kevin Allen, hereinafter referred to as “ALLEN,” is, and
2 was at all times complained of herein, employed as a full-time sworn Deputy
3 Sheriff with the San Bernardino County Sheriff’s Department. At all times
4 complained of herein, ALLEN was acting as an individual person under the color
5 of state law, pursuant to his status as a Deputy Sheriff, and was acting in the
6 course of and within the scope of his employment with defendant County of San
7 Bernardino.

8 12. Defendant Donald A. Patton, hereinafter referred to as “PATTON,”
9 is, and was at all times complained of herein, employed as a full-time sworn
10 Deputy Sheriff with the San Bernardino County Sheriff’s Department. At all times
11 complained of herein, PATTON was acting as an individual person under the
12 color of state law, pursuant to his status as a Deputy Sheriff, and was acting in the
13 course of and within the scope of his employment with defendant County of San
14 Bernardino.

15 13. Defendant Jason A. Costa, hereinafter referred to as “COSTA,” is,
16 and was at all times complained of herein, employed as a full-time sworn Deputy
17 Sheriff with the San Bernardino County Sheriff’s Department. At all times
18 complained of herein, COSTA was acting as an individual person under the color
19 of state law, pursuant to his status as a Deputy Sheriff, and was acting in the
20 course of and within the scope of his employment with defendant County of San
21 Bernardino.

22 14. Defendant Oswaldo Rodriguez, hereinafter referred to as
23 “RODRIGUEZ,” is, and was at all times complained of herein, employed as a
24 full-time sworn Deputy Sheriff with the San Bernardino County Sheriff’s
25 Department. At all times complained of herein, RODRIGUEZ was acting as an
26 individual person under the color of state law, pursuant to his status as a Deputy
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1 Sheriff, and was acting in the course of and within the scope of his employment
2 with defendant County of San Bernardino.

3 15. Defendant Jonathan Thorp, hereinafter referred to as “THORP,” is,
4 and was at all times complained of herein, employed as a full-time sworn Deputy
5 Sheriff with the San Bernardino County Sheriff’s Department. At all times
6 complained of herein, THORP was acting as an individual person under the color
7 of state law, pursuant to his status as a Deputy Sheriff, and was acting in the
8 course of and within the scope of his employment with defendant County of San
9 Bernardino.

10 16. Defendant Jonathan Millard, hereinafter referred to as “MILLARD,”
11 is, and was at all times complained of herein, employed as a full-time sworn
12 Social Service Practitioner with the with the Child and Family Services Division
13 of the County of San Bernardino. At all times complained of herein, MILLARD
14 was acting as an individual person under the color of state law, pursuant to his
15 status as a Social Service Practitioner with the Child and Family Services Division
16 of the County of San Bernardino, and was acting in the course of and within the
17 scope of his employment with defendant County of San Bernardino.

18 17. Defendant Lindsay Elise Cristobal, hereinafter referred to as
19 “CRISTOBAL,” is, and was at all times complained of herein, employed as a full-
20 time sworn Social Service Practitioner with the Child and Family Services
21 Division of the County of San Bernardino. At all times complained of herein,
22 CRISTOBAL was acting as an individual person under the color of state law,
23 pursuant to his status as a Social Service Practitioner, and was acting in the course
24 of and within the scope of her employment with defendant County of San
25 Bernardino.

26 18. Defendants DOES 1 through 6, inclusive, are sworn peace officers
27 and/or deputy sheriffs and/or supervisors and/or investigators and/ Special
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1 Officers and/or a dispatchers and/or Social Services Practitioners and/or some
2 other public officer, public official or employee of defendant County of San
3 Bernardino, who in some way committed some or all of the tortious actions (and
4 constitutional violations) complained of in this action, and/or are otherwise
5 responsible for and liable to plaintiffs for the acts complained of in this action,
6 whose identities are unknown to plaintiffs.

7
8 19. At all times complained of herein, DOES 1 through 6, inclusive, were
9 acting as individual persons under color of state law, pursuant to their authority as
10 sworn peace officers and/or deputy sheriffs and/or Special Officers and/or police
11 officers and/or Supervisors (i.e. Sergeants, Lieutenants, Captains, Commanders,
12 etc.) and/or Social Services Practitioners and/or dispatchers, employed by
13 defendant County of San Bernardino, and were acting in the course of and within
14 the scope of their employment with defendant County of San Bernardino.

15 20. Defendants DOES 7 through 10, inclusive, are sworn peace officers
16 and/or Supervisors and/or Commanders and/or Captains and/or Lieutenants and/or
17 Sergeants and/or Detectives and/or other Supervisory personnel (such as) and/or
18 policy making and/or final policy making officials, employed by the County of
19 San Bernardino, who are in some substantial way liable and responsible for, or
20 otherwise proximately caused and/or contributed to the occurrences complained of
21 by plaintiffs in this action, such as via supervisory liability (i.e. failure to properly
22 supervise, improperly directing subordinate officers, approving actions of
23 subordinate officers), via bystander liability (failing to intervene in and stop
24 unlawful actions of their subordinates and/or other officers), and such as by
25 creating and/or causing the creation of and/or contributing to the creation of the
26 policies and/or practices and/or customs and/or usages of the County of San
27 Bernardino for: 1) for unlawfully taking and detaining the children of persons by
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1 using false statements of material facts¹ with deliberate indifference and malice;
 2 2) for unlawfully seizing persons; 3) for unlawful searching and seizing persons
 3 and their personalty / property; 4) for falsely arresting and falsely imprisoning
 4 persons; 5) for fabricating / destroying / concealing / altering / withholding
 5 evidence in criminal and civil actions, and for otherwise “framing” persons in
 6 criminal actions, in order to falsely and maliciously, oppressively convict innocent
 7 persons, to protect them and other deputy sheriffs, social service practitioners and
 8 supervisory personnel from civil, administrative and criminal liability; 6) for
 9 interfering with persons’ and/or otherwise violating persons’ constitutionally
 10 protected right to free speech; 7) for defaming peace officers to their employers
 11 with false allegations of criminal conduct with spite, hatred and ill-will; 8) for
 12 covering-up unlawful and tortious conduct by County of San Bernardino
 13 personnel, and were a proximate cause of the very same California state law, and
 14 federal and state constitutional violations complained above, and complained of
 15 by the plaintiffs in this action.
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17 21. At all times complained of herein, DOES 7 through 10, inclusive,
 18 were acting were acting as individual persons acting under the color of state law,
 19 pursuant to their authority as Deputy Sheriffs and/or Supervisory Officers,
 20 Commanders and/or Captains and/or Lieutenants and/or Sergeants and/or other
 21 Supervisory personnel and/or policy making and/or final policy making officials,
 22 employed by the County of San Bernardino, and/or some other public official(s)
 23 with County of San Bernardino, and were acting in the course of and within the
 24 scope of their employment with defendant County of San Bernardino.

25 22. Moreover, at all times complained of herein, defendants DOES 1
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¹ And omissions of material facts.

1 through 10, inclusive, were acting pursuant to, or otherwise contributed to the
2 creation and maintenance of, the customs, policies, usages and practices of the
3 County of San Bernardino, for, inter alia: 1) for unlawfully taking and detaining
4 the children of persons by using false statements of material fact with deliberate
5 indifference and malice; 2) for unlawfully seizing persons; 3) for unlawful
6 searching and seizing persons and their personalty / property; 4) for falsely
7 arresting and falsely imprisoning persons; 5) for fabricating / destroying /
8 concealing / altering / withholding evidence in criminal and civil actions, and for
9 otherwise “framing” persons in criminal actions, in order to falsely and
10 maliciously, oppressively convict innocent persons, to protect them and other
11 deputy sheriffs, social service practitioners and supervisory personnel from civil,
12 administrative and criminal liability; 6) for interfering with persons’ and/or
13 otherwise violating persons’ constitutionally protected right to free speech; 7) for
14 defaming peace officers to their employers with false allegations of criminal
15 conduct with spite, hatred and ill-will; 8) for covering-up unlawful and tortious
16 conduct by County of San Bernardino personnel, and were a proximate cause of
17 the very same California state law, and federal and state constitutional violations
18 complained above, and complained of by the plaintiff in this action.

20 23. In addition to the above and foregoing, defendants DOES 1 through
21 6, inclusive, acted pursuant to a conspiracy, agreement and understanding and
22 common plan and scheme to deprive the plaintiffs ROBERT FISHER and
23 PAULA FISHER of their federal Constitutional and statutory rights, as
24 complained of in this action, and acted in joint and concerted action to so deprive
25 plaintiffs ROBERT FISHER and PAULA FISHER of those rights as complained
26 of herein; all in violation of 42 U.S.C. § 1983, and otherwise in violation of
27 United States (Constitutional and statutory) law.

28 24. Said conspiracy / agreement / understanding / plan / scheme / joint

1 action / concerted action, above-referenced, was a proximate cause of the
2 violation of the plaintiffs ROBERT FISHER's and PAULA FISHER's federal and
3 state constitutional and statutory rights, as complained of herein.

4 25. Plaintiffs are presently unaware of the identities of DOES 1 through
5 10, inclusive, and will amend this complaint to add and to show the actual names
6 of said DOE defendants, when ascertained by plaintiffs.
7

8 **INCIDENT THAT GAVE RISE TO LITIGATION**
9

10 26. In the weeks prior to the subject incident, plaintiffs' daughter S.F.
11 made several unsubstantiated claims and obviously false of child abuse by her
12 mother, plaintiff PAULA FISHER, to her church, school counselors, teachers and
13 Child and Family Services personnel for the purpose of getting sympathy of her
14 classmates. None of the allegations of the plaintiffs' minor child S.F. were found
15 to be true and none were true.

16 27. More specifically, defendant CRISTOBAL interviewed the plaintiffs'
17 minor child S.F. at her school on or about January 12, 2017. No concerns were
18 claimed or shown by defendant CRISTOBAL after the interview, because none of
19 the allegations of child abuse were true.

20 28. Moreover, on or about January 26, 2017, the plaintiffs' minor child
21 S.F. was again interrogated and physically inspected at her school by defendant
22 CRISTOBAL, who relayed the lack of evidence of any child abuse whatsoever to
23 defendant HIGGINS on or about that date, and said defendants refused to close
24 the investigations of the plaintiff ROBERT FISHER and PAULA FISHER,
25 despite knowing and believing that the allegations of child abuse were
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1 unsubstantiated and obviously and patently false².

2 29. Thereafter, on February 7, 2017, an unknown school counselor
3 referred another allegation of child abuse purportedly by the plaintiffs' minor
4 child S.F. to the Child and Family Services Division of the County of San
5 Bernardino. Once again, those allegations of bruising of the minor child S.F. were
6 also unsubstantiated.

7 30. That same day, February 7, 2017, a friend of the plaintiffs' minor
8 child S.F. reported to the Child and Family Services Division of the County of
9 San Bernardino that the minor child S.F. may try and hurt herself, which report
10 was conveyed to a deputy named "Herbert", a DOE defendant, of the San
11 Bernardino County Sheriff's Department.

12 31. Thereafter, on February 9, 2017, two San Bernardino County
13 Sheriff's Department deputy sheriffs, defendant THORP and another deputy
14 sheriff named Ian Alvarado, went to the minor child S.F.'s school to do a welfare
15 check. Once again, the allegations of child abuse against ROBERT FISHER and
16 PAULA FISHER were found to be unsubstantiated and unfounded.

17 32. That same day, February 9, 2017, defendants THORP and
18 CRISTOBAL detained and interviewed plaintiffs' minor child S.F. without the
19 consent of the parents at her school, and created a custodial environment and a
20 custodial interrogation in which the plaintiffs' minor child was not free to leave
21 and was involuntarily detained and interrogated, nor was the child advised of her
22 right to counsel and right against self-incrimination after being detained and
23 before being interrogated at school by defendants THORP and CRISTOBAL.
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28 ² At this time defendant CRISTOBAL noted that the minor child S.F. "did not
have any abnormal bruising or discoloration on her."

1 Once again, all allegations of child abuse were found unsubstantiated, and
2 defendant THORP did not author any police report at that time.³

3 33. Thereafter, on February 21, 2017, defendant HIGGINS went to
4 plaintiffs' minor child's school to re-interview plaintiffs' minor child S.F. without
5 the consent of the parent. Defendant HIGGINS interrogated S.F. in a custodial
6 environment without advising her of her rights. During this interview, S.F. told
7 defendant HIGGINS that her mother, plaintiff PAULA FISHER, had kicked her,
8 pushed her into a wall, and made her take unknown pills that made her throw up—
9 all of these statements being false and unsubstantiated.

10 34. Defendant HIGGINS did not author a police report based upon his
11 February 21, 2017 interrogation of S.F. until 6 days later on February 27, 2016.

12 35. On February 22, 2017, a friend of the plaintiffs' daughter S.F. named
13 "Mary" reported to a school counselor that S.F. had sent her a picture on
14 "SnapChat"⁴ which showed a nosebleed purportedly caused by PAULA FISHER.
15 However, this allegation was entirely false, as the bleeding was the result of S.F.'s
16 history of chronic nosebleeds. In fact, S.F. has had surgery on her nasal cavity to
17 stop the nosebleeds. Information regarding S.F.'s history of nosebleeds was
18 available to defendants, and would have been easily discoverable with reasonable
19 investigation.
20

21 36. After receiving the aforementioned information from "Mary," a
22 school counselor named "Reichmann" reported S.F.'s nosebleed to defendant
23 HIGGINS, who interviewed "Mary."
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27 ³ Defendant THORP authored a report regarding his custodial interrogation of plaintiffs' minor
child 17 days later on February 26, 2017.

28 ⁴ SnapChat is a popular cellular telephone application which users may use to send text
messages, photographs, and videos.

1 37. On February 23, 2017, Plaintiff ROBERT FISHER received a phone
2 call from defendant CRISTOBAL, who told him that S.F. had a nosebleed and
3 that it had been reported to the County of San Bernardino Division of Child and
4 Family Services. During this 11-minute conversation, plaintiff ROBERT FISHER
5 told defendant CRISTOBAL that Child and Family Services was welcome to
6 conduct any forensic interview and medical examination of S.F. Plaintiff
7 ROBERT FISHER also told defendant CRISTOBAL that he and PAULA
8 FISHER had nothing to hide, and would be available for an interview at a neutral
9 location.

10 38. Later that day, February 23, 2017, defendant HIGGINS initiated
11 surveillance upon the plaintiffs' home and found no activity. Defendant HIGGINS
12 and DOES 1 and 2 then returned to the police station and looked up the plaintiffs'
13 daughter's grandmother's address in Redlands, California. When defendants
14 HIGGINS and ALLEN arrived at the grandmother's (Wilma Fisher's) house in
15 Redlands, there was no one home.

16 39. Thereafter, defendants HIGGINS, ALLEN and DOES 1 and 2
17 returned to the plaintiffs' residence and knocked on the door, but there was no one
18 home.

19 40. Upon returning to the sheriff's substation, defendant HIGGINS and
20 DOES 1 and 2 advised their sergeant, an unidentified DOE deputy, of the
21 foregoing facts and began authoring a search warrant for the FISHER family
22 home and an interview warrant for plaintiffs' minor child S.F.

23 41. Thereafter, defendant HIGGINS and DOES 1 and 2 asked defendant
24 ALLEN to return to the grandmother's (Wilma Fisher's) house. During her
25 interview with defendant ALLEN and DOES 1 and 2, Wilma Fisher denied
26 knowing of any child abuse. Wilma Fisher was truthful, as no child abuse had in
27 fact taken place in the FISHER residence.
28

1 42. Defendant ALLEN and DOES 1 and 2 then telephoned plaintiff
2 ROBERT FISHER, who told defendant ALLEN and DOES 1 and 2 that his
3 daughter was home. Plaintiff ROBERT FISHER then told defendant ALLEN and
4 DOES 1 and 2 that he did not want officers at his home drawing attention from his
5 neighbors, nor did he wish to go to the sheriff's substation. However, plaintiff
6 ROBERT FISHER told defendant ALLEN that he would bring his wife and
7 daughter for an interview at a neutral place.

8 43. Defendants HIGGINS, ALLEN and DOES 1 through 10, inclusive,
9 were angered by plaintiff ROBERT FISHER's refusal to let officers into his home
10 and defendants HIGGINS, ALLEN and DOES 1 through 10, inclusive, refused to
11 meet plaintiff ROBERT FISHER, PAULA FISHER, and S.F. at a neutral place.
12

13 44. Moreover, defendant ALLEN threatened to contact plaintiff
14 ROBERT FISHER's employer, the Banning Police Department, in an attempt to
15 create a disciplinary action against plaintiff ROBERT FISHER and thereby cause
16 him to lose his position as a police sergeant.

17 45. At that time, plaintiff ROBERT FISHER asked S.F. about reports of
18 a nosebleed, and S.F. told ROBERT FISHER she did not know anything about a
19 nosebleed.

20 46. Furthermore, defendants HIGGINS, ALLEN and DOES omitted
21 from their police reports the material fact that plaintiff ROBERT FISHER was
22 cooperating with their investigation and that plaintiff ROBERT FISHER was
23 willing to meet with defendants HIGGINS and ALLEN to interview PAULA
24 FISHER and daughter at a neutral place other than the sheriff's substation or the
25 family home.

26 47. Later that same day, on February 23, 2017, while surveilling
27 plaintiffs ROBERT FISHER and PAULA FISHER's home, defendant HIGGINS
28 saw the plaintiffs ROBERT FISHER and PAULA FISHER leave their residence

1 and get into their car.

2 48. Determined to falsely arrest plaintiffs ROBERT FISHER and
3 PAULA FISHER, defendant HIGGINS concocted a ruse to detain plaintiffs
4 whereby HIGGINS would claim to believe the plaintiffs' minor daughter S.F. was
5 in the car with her parents—something he knew was not true, since he had been
6 surveilling the plaintiffs ROBERT FISHER and PAULA FISHER.

7 49. Thereafter, on February 23, 2017 at approximately 6:30 p.m., on
8 Glen Oak Road in the City of Yucaipa, under the ruse of “checking the welfare”
9 of S.F., defendant HIGGINS, and DOES 1 through 10, inclusive, conducted a
10 traffic stop of the plaintiffs ROBERT FISHER and PAULA FISHER's car
11 without a warrant or probable cause or a reasonable suspicion that plaintiff
12 ROBERT FISHER and his wife PAULA FISHER had committed a crime.

13 50. Soon thereafter, defendants ALLEN, RODRIGUEZ, PATTION and
14 other DOES San Bernardino County deputy sheriffs arrived and also participated
15 in the detention of plaintiffs ROBERT FISHER and PAULA FISHER.

16 51. Defendant HIGGINS, ALLEN, RODRIGUEZ, PATTON and/or
17 DOES 1 through 10 inclusive, told the plaintiffs ROBERT FISHER and PAULA
18 FISHER that they were being detained for questioning about their minor daughter
19 S.F. After being asked about the whereabouts of his daughter, plaintiff ROBERT
20 FISHER told defendant HIGGINS and DOES 1 through 10, inclusive, that his
21 daughter was safe at home and she was fine.

22 52. Plaintiff ROBERT FISHER then asked if any of the aforementioned
23 defendants had their belt recorders on, to which defendant SBSD deputies replied
24 that they did not. This prompted plaintiff ROBERT FISHER to attempt to record
25 the subject incident with his cell phone video recorder, which angered defendants
26 HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1 through 10, inclusive.

27 53. Thereafter, defendant(s) HIGGINS and/or ALLEN and/or
28

1 RODRIGUEZ and/or PATTON and/or DOES 1 through 10, inclusive, handcuffed
2 and falsely arrested PAULA FISHER and placed her in defendant RODRIGUEZ'
3 patrol car.

4 54. While handcuffed in the back of defendant RODRIGUEZ's patrol
5 car, defendant RODRIGUEZ told PAULA FISHER that "This was blown out of
6 proportion and could have been handled differently."

7 55. After the aforementioned defendants handcuffed and arrested
8 plaintiff PAULA FISHER, plaintiff ROBERT FISHER then demanded that he be
9 released for detention. Defendant HIGGINS told Plaintiff ROBERT FISHER that
10 he was only free to go back to his residence and to let defendants into his home so
11 that they could search it without a warrant. When ROBERT FISHER refused to
12 agree to let defendants into his home, plaintiff handcuffed and arrested by
13 defendant ALLEN.

14 56. After handcuffing and arresting plaintiff ROBERT FISHER,
15 defendant ALLEN told plaintiff ROBERT FISHER he was being arrested for
16 "obstruction" of his investigation because of plaintiff ROBERT FISHER's refusal
17 to consent to a search of his home.

18 57. Defendant HIGGINS fabricated false material statements of fact in
19 his police report of the subject incident, on one hand demanding that plaintiff
20 ROBERT FISHER leave the scene of the detention and allow said defendant
21 officers into his home without any fears for officer safety, while on the other hand
22 falsely stating in his police report after plaintiffs' refusal to let officers into his
23 home that "I [defendant HIGGINS] feared because of Robert FISHER'S
24 knowledge of law enforcement procedures, tactics, use of barricades tactics and
25 the use of firearms, he could cause a situation at his residence or during contact
26 with V1 that could place her (V1) or law enforcement investigators in a hazardous
27 situation"; something that was patently absurd and untrue. Said statements of false
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1 material facts were then maliciously used to create a bail enhancement of
2 \$100,000.00 upon plaintiff ROBERT FISHER.

3 58. Thereafter, both plaintiffs ROBERT FISHER and PAULA FISHER
4 were transported and booked in custody at the Yucaipa sheriff's substation for
5 alleged violations of California Penal Code §§ 273a(a) (felony child abuse) and
6 182 (conspiracy to commit a crime).

7 59. During the course of February 23, 2017 incident, plaintiffs ROBERT
8 FISHER and PAULA FISHER, as well as plaintiffs' minor daughter S.F., all had
9 cellular telephones which were seized and searched, without a warrant or probable
10 cause, by defendants HIGGINS and/or ALLEN and/or RODRIGUEZ and/or
11 PATTON and/or DOES 1 through 10, inclusive. In total, defendants seized and
12 searched three telephones belonging to plaintiffs. Those telephones are still in the
13 possession, custody and control of defendant deputy sheriffs and defendant
14 COUNTY.

15 60. After being arrested and taken to jail for said bogus felony charges,
16 plaintiff ROBERT FISHER and PAULA FISHER were then questioned by
17 defendant HIGGINS, and plaintiffs refused to give statements on the advice of
18 counsel, and plaintiff requested to speak with an attorney.

19 61. Thereafter, defendant ALLEN and/or DOES 1 through 10, inclusive,
20 authored materially facially and factually false search warrant affidavit(s) to enter
21 and search, plaintiffs' home and a detention warrant for plaintiffs' minor child,
22 S.F. Defendant ALLEN and/or DOES 1 through 10, inclusive, also authored
23 materially false search warrant affidavits for the cell phone of plaintiffs' minor
24 daughter S.F.

25 62. Thereafter, defendants HIGGINS and/or ALLEN and/or PATTON
26 and/or COSTA and/or DOES 1 through 10, inclusive, took the key to the
27 plaintiffs' residence and let themselves into the Fisher family home.
28

1 63. After being seized by defendants HIGGINS and/or ALLEN and/or
2 RODRIGUEZ and/or PATTON and/or COSTA and/or DOES 1 through 10,
3 inclusive, the plaintiffs' minor children S.F. and A.F. were taken to the Yucaipa
4 sheriff's substation and were again interrogated by said defendants.

5 64. Thereafter, defendants HIGGINS and/or ALLEN and/or
6 RODRIGUEZ and/or PATTON and/or COSTA and/or DOES 1 through 10,
7 inclusive, then gave custody of Plaintiffs ROBERT FISHER and PAULA
8 FISHER's two minor children to defendant MILLARD, who then put the minor
9 children into a foster home.

10 65. Thereafter, an unknown Lieutenant⁵ DOE deputy sheriff with the San
11 Bernardino County Sheriff's Department contacted Plaintiffs ROBERT FISHER's
12 employer, the Banning Police Department, and told plaintiff's supervisor(s) that
13 plaintiff ROBERT FISHER was arrested for refusing to cooperate with said
14 investigation—an allegation which was wholly false. This resulted in plaintiff
15 ROBERT FISHER being suspended from his employment from the Banning
16 Police Department, having to turn in his badge and service weapon, and being
17 subject of an internal affairs investigation. That investigation ultimately found that
18 plaintiff ROBERT FISHER had done nothing wrong.

19 66. As a result of plaintiff ROBERT FISHER's suspension from his
20 employment, plaintiff ROBERT FISHER suffered an estimated \$24,701.53 in lost
21 overtime. However, said DOE Lieutenant told the Banning Police Chief Alex
22 Diaz that "This could have been handled differently."

23 67. On February 28, 2017 at 4:13 p.m. and 4:18 p.m., defendant
24 PATTON accessed plaintiff ROBERT FISHER's email account without a warrant
25
26

27
28 ⁵ And / or other supervisory official.

1 and forwarded eight photographs to his email account (dpatton@sbcasd.org).

2 68. Based upon the aforementioned events, Defendants HIGGINS,
3 ALLEN, COSTA and/or DOES 1 through 10 drafted investigatory reports in
4 which each Defendant intentionally and falsely alleged that plaintiffs PAULA
5 FISHER and ROBERT FISHER had committed criminal acts; to wit violations of
6 Cal. Pen. Code §§ 422(a) (criminal threats), 273(b) (willful cruelty to child), and
7 148(a)(1) (resist / delay / obstruct police officer).

8 69. On October 2, 2017, based upon the police reports authored by
9 Defendants, the San Bernardino County District Attorney's Office charged
10 plaintiff PAULA FISHER under Cal. Pen. Code §§ 422(a) (criminal threats) and
11 273(b) (willful cruelty to child).

12 70. On August 3, 2018, the San Bernardino County Superior Court, on
13 motion of the District Attorney's Office, dismissed all criminal charges against
14 PAULA FISHER.

15 71. As there was no evidence of any conspiracy nor physical abuse upon
16 Plaintiffs ROBERT FISHER and PAULA FISHER's minor children, the San
17 Bernardino County District Attorney's Office refused to file criminal charges
18 against plaintiff ROBERT FISHER.

19 72. Defendants HIGGINS, ALLEN, PATTON, COSTA, RODRIGUEZ,
20 MILLARD, CRISTOBAL and DOES 1 through 10, inclusive, at no point
21 performed any forensic medical or Child Abuse and Neglect ("CAN")
22 examinations of plaintiffs' minor child S.F., which is standard protocol for child
23 abuse allegations.

24 73. Defendants HIGGINS, ALLEN, PATTON, COSTA, RODRIGUEZ,
25 MILLARD, CRISTOBAL and DOES 1 through 10, inclusive, omitted witness
26 statements and facts which showed that Plaintiffs ROBERT FISHER and PAULA
27 FISHER were innocent of any crimes.
28

74. Plaintiffs' daughter, S.F., ultimately authored a recantation letter, which was also omitted from the reports of defendants HIGGINS, ALLEN, PATTON, COSTA, RODRIGUEZ, MILLARD, CRISTOBAL and DOES 1 through 10, inclusive.

75. On May 1, 2017, San Bernardino County Superior Court Judge Steven Mapes determined all of the child abuse claims to be untrue and the juvenile court petition was dismissed.

FIRST CAUSE OF ACTION
UNREASONABLE SEIZURE OF PERSON
UNDER THE FOURTH AMENDMENT
[42 U.S.C. § 1983]
(By Plaintiffs ROBERT FISHER and PAULA FISHER Against All Defendants)

76. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in paragraphs 1 through 75, inclusive, above, as if set forth in full herein.

77. On February 23, 2017 at approximately 6:30 p.m. on Glen Oak Road in the City of Yucaipa, under the ruse of "checking the welfare" of plaintiffs' minor daughter S.F., defendant HIGGINS, and DOES 1 through 10, inclusive, conducted a traffic stop of the plaintiff ROBERT FISHER and his wife PAULA FISHER's car. Defendants conducted the stop without a warrant, probable cause, or a reasonable suspicion to believe that plaintiffs ROBERT FISHER and/or PAULA FISHER had committed a crime.

78. Soon thereafter, defendants ALLEN, RODRIGUEZ, PATTON and other DOES San Bernardino County deputy sheriffs arrived and also participated in the warrantless, suspicionless detention and subsequent unlawful seizure and false arrest of the plaintiff ROBERT FISHER and his wife PAULA FISHER.

79. Defendant HIGGINS, ALLEN, RODRIGUEZ, PATTON and/or

1 DOES 1 through 10 inclusive, told the plaintiff ROBERT FISHER and his wife
2 PAULA FISHER that they were being detained for questioning about their minor
3 daughter S.F. After being asked about the whereabouts of his daughter, plaintiff
4 ROBERT FISHER told defendant HIGGINS and DOES 1 through 10, inclusive,
5 that his daughter was safe at home and she was fine.

6 80. Plaintiff ROBERT FISHER then asked if any of the aforementioned
7 arresting deputies had their belt recorders on, to which said deputies stated that
8 they did not. This prompted plaintiff ROBERT FISHER to attempt to start
9 recording the subject incident with his cell phone video recorder, which angered
10 defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1 through
11 10, inclusive.

12 81. Thereafter, defendant(s) HIGGINS and/or ALLEN and/or
13 RODRIGUEZ and/or PATTON and/or DOES 1 through 10, inclusive, handcuffed
14 and falsely arrested PAULA FISHER and placed her in defendant RODRIGUEZ'
15 patrol car. While handcuffed in the back of defendant RODRIGUEZ's patrol car,
16 defendant RODRIGUEZ told PAULA FISHER that "This was blown out of
17 proportion and could have been handled differently," demonstrating that
18 defendant RODRIGUEZ knew that said officers were acting with deliberate
19 indifference to the rights of plaintiffs and that said unlawful seizures were done
20 with malice.

21 82. Defendants arrested plaintiff PAULA FISHER without probable
22 cause to believe she had committed any crime.

23 83. After said defendants handcuffed and falsely arrested PAULA
24 FISHER, plaintiff ROBERT FISHER then demanded to leave the unlawful
25 detention. Plaintiff ROBERT FISHER was told by defendant HIGGINS that he
26 was only free to go back to his residence and to let said deputies into his home and
27 to search the same without a warrant. When plaintiff ROBERT FISHER refused
28

1 to let officers into his home, plaintiff handcuffed and falsely arrested by defendant
2 ALLEN as retaliation for his verbal protests in violation of his First Amendment
3 right to protest said defendants unlawful conduct.

4 84. After handcuffing and falsely arresting plaintiff ROBERT FISHER,
5 defendant ALLEN told plaintiff ROBERT FISHER he was being arrested for
6 “obstruction” of his investigation because of plaintiff ROBERT FISHER’s refusal
7 to consent to allow officers into his home and to search the same without a
8 warrant. Thus, plaintiff ROBERT FISHER was falsely and unlawfully arrested for
9 constitutionally protected conduct and his refusal to consent to a warrantless entry
10 into his home in violation of his Fourth Amendment right to be free from the
11 unlawful seizure of his person.

12 85. Thereafter, both plaintiffs ROBERT FISHER and PAULA FISHER
13 were transported and booked at the Yucaipa sheriff’s substation for violations of
14 California Penal Code §§ 273a(a) (felony child abuse) and 182 (conspiracy to
15 commit a crime). Both charges were entirely baseless.

16 86. Accordingly, the arrests of plaintiffs ROBERT FISHER and PAULA
17 FISHER by defendants HIGGINS and/or ALLEN and/or RODRIGUEZ and/or
18 PATTON and/or DOES 1 through 10, inclusive, constituted unreasonable seizures
19 in violation of ROBERT FISHER’s and PAULA FISHER’s right to be free from
20 unreasonable seizures of person under the Fourth Amendment to the United States
21 Constitution.

22 87. As a result of the above-mentioned unreasonable seizures caused by
23 defendants HIGGINS, ALLEN, PATTON, COSTA, RODRIGUEZ, MILLARD,
24 CRISTOBAL and DOES 1 through 10, inclusive, Plaintiffs ROBERT FISHER
25 and PAULA FISHER had their two minor children taken from them for ten
26 weeks.
27

28 88. Moreover, as a result of the above-mentioned unreasonable seizure,

1 plaintiff ROBERT FISHER was terminated from his position as a Sergeant with
2 the Banning Police Department.

3 89. In addition, the above-mentioned unreasonable seizure caused
4 Plaintiffs ROBERT FISHER and PAULA FISHER to suffer substantial damages,
5 including, but not limited to, lost wages / profits and other income that plaintiff
6 would have earned / made / acquired while suspended from his employment, loss
7 of plaintiffs' good reputation as a 23-year career law enforcement officer, bail
8 amounts, attorneys' fees, the loss of three cell phones, and other special damages;
9 all in an amount to be shown at trial, in excessive of \$10,000,000.00.

10 90. Said actions and omissions of the defendants, above-referenced,
11 above-referenced, was done maliciously and in reckless disregard of ROBERT
12 FISHER's and PAULA FISHER's constitutional rights; sufficient for an award of
13 punitive damages against said defendants; in an amount to be shown at trial, in
14 excessive of \$10,000,000.00.
15

16
17 **SECOND CAUSE OF ACTION**
18 **USE OF UNREASONABLE / EXCESSIVE FORCE ON PERSON**
19 **UNDER THE FOURTH AMENDMENT**

20 **[42 U.S.C. § 1983]**

21 **(By Plaintiffs ROBERT FISHER and PAULA FISHER Against Defendants**
22 **HIGGINS, ALLEN, RODRIGUEZ, PATTON And DOES 1 through 10,**
23 **inclusive)**

24 91. Plaintiffs hereby reallege and incorporate by reference the allegations
25 set forth in paragraphs 1 through 90, inclusive, above, as if set forth in full herein.

26 92. As shown above, on February 23, 2017, Plaintiffs ROBERT FISHER
27 and PAULA FISHER were handcuffed by defendants HIGGINS and/or ALLEN
28 and/or RODRIGUEZ and/or PATTON and/or DOES 1 through 10, inclusive.

93. Said handcuffing was deliberately done in a very tight, painful and

1 cruel and sadistic manner with the very purposed of causing Plaintiffs ROBERT
2 FISHER and PAULA FISHER excruciating pain and agony, as the handcuffs
3 were cinched down too tightly on their wrists before plaintiffs were placed in the
4 back of a patrol car.

5 94. Accordingly, said excessive handcuffing of Plaintiffs ROBERT
6 FISHER and PAULA FISHER was done in violation of their right to be free from
7 the use of unreasonable force upon their persons under the Fourth Amendment to
8 the United States Constitution.

9 95. As a direct and proximate result of the actions of defendants
10 HIGGINS' and/or ALLEN's and/or RODRIGUEZ's and/or PATTON's and/or
11 DOES 1 through 10, inclusives' use of unlawful and unreasonable force upon
12 plaintiffs by said defendants, plaintiffs ROBERT FISHER and PAULA FISHER:
13 1) were substantially physically, mentally and emotionally injured, and suffered
14 great physical, mental and emotional injury, distress, pain and suffering; 2)
15 incurred medical and psychological costs, bills and expenses, 3) incurred
16 attorney's fees, bail amounts and associated litigation and other related costs, and
17 4) incurred the loss of business wages and profits, 5) incurred other special and
18 general damages and expenses, in an amount to be proven at trial, in excess of
19 \$10,000,000.00.
20

21 96. The actions of said defendants, and each of them, as complained of
22 herein, were committed maliciously, oppressively and in reckless disregard of
23 ROBERT FISHER's and PAULA FISHER's constitutional rights, sufficient for
24 an award of punitive / exemplary damages against said defendants, in an amount
25 to be proven at trial, in excess of \$10,000,000.00.

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THIRD CAUSE OF ACTION
UNREASONABLE SEARCH AND SEIZURE OF REAL PROPERTY
UNDER THE FOURTH AMENDMENT

[42 U.S.C. § 1983]

(By Plaintiffs ROBERT FISHER and PAULA FISHER Against Defendants HIGGINS, ALLEN, PATTON, COSTA And DOES 1 through 10, inclusive)

97. Plaintiffs hereby reallege and incorporates by reference the allegations set forth in paragraphs 1 through 96, inclusive, above, as if set forth in full herein.

98. As described above, on February 23, 2017, defendants HIGGINS and/or ALLEN and/or PATTON and/or COSTA and/or DOES 1 through 10, inclusive, after falsely arresting plaintiffs ROBERT FISHER and PAULA FISHER, said defendants obtained the key to the plaintiffs' residence that was unlawfully seized during the course of plaintiffs' false arrests, and let themselves into the Fisher family home while the plaintiffs' minor children were home alone, to further unlawfully seize and search the plaintiffs' home, and to unlawfully seize and interrogate the plaintiffs' two minor children S.F. and A.F, and was done by said defendants with deliberate indifference and malice to the rights of plaintiffs ROBERT FISHER and PAULA FISHER.

99. More specifically, defendants ALLEN and/or PATTON and/or DOES 1 through 10, inclusive, authored material false statements of fact / omissions of fact in his/their search warrant applications before unlawfully entering and searching the home of Plaintiffs ROBERT FISHER and PAULA FISHER, seizing their minor children, and seizing the cell phone of their minor child S.F. while both children were at home alone.

100. As a direct and proximate result of the actions of defendants HIGGINS' and/or ALLEN's and/or PATTON's and/or COSTA's and/or DOES 1 through 10, inclusive's' unlawful entry into and search of the plaintiffs' private

1 residence by said defendants, Plaintiffs ROBERT FISHER and PAULA FISHER:
 2 1) were substantially physically, mentally and emotionally injured, and suffered
 3 great physical, mental and emotional injury, distress, pain and suffering; 2)
 4 incurred medical and psychological costs, bills and expenses, 3) incurred
 5 attorney's fees, bail amounts and associated litigation and other related costs, and
 6 4) incurred the loss of business wages, profits, and personalty (the loss of three
 7 cell phones), and 5) incurred other special and general damages and expenses, in
 8 an amount to be proven at trial, in excess of \$10,000,000.00.

9 101. The actions of said defendants, and each of them, as complained of
 10 herein, were committed maliciously, oppressively and in reckless disregard of
 11 ROBERT FISHER's and PAULA FISHER's constitutional rights, sufficient for
 12 an award of punitive / exemplary damages against said defendants, in an amount
 13 to be proven at trial, in excess of \$10,000,000.00.
 14

15
 16 **FOURTH CAUSE OF ACTION**
 17 **DENIAL OF SUBSTANTIVE DUE PROCESS–**
 18 **INTERFERENCE WITH FAMILIAL RELATIONSHIP**
 19 **UNDER THE FOURTEENTH AMENDMENT**
 20 **[42 U.S.C. § 1983]**

21 **(By Plaintiffs ROBERT FISHER and PAULA FISHER Against Defendants**
 22 **HIGGINS, ALLEN, RODRIGUEZ, COSTA, THORP, CRISTOBAL,**
 23 **COUNTY and DOES 1 through 10, inclusive)**

24 102. Plaintiffs hereby reallege and incorporate by reference the allegations
 25 set forth in paragraphs 1 through 101, inclusive, above, as though set forth in full
 26 herein.

27 103. As shown above, the unlawful seizure and custodial interrogation of
 28 Plaintiffs ROBERT FISHER and PAULA FISHER's minor child S.F. on
 February 9, 2017 by defendants THORP, CRISTOBAL and DOES 1 through 10,
 inclusive, was undertaken without consent, probable cause, a protective custody

1 warrant, or exigent circumstances justifying interrogation of the minor child, and
2 that the policies, practices, customs, procedures, or inadequate training of social
3 workers such as CRISTOBAL, and law enforcement officers such as defendants
4 THORP by COUNTY, were a contributing or driving force behind the action of
5 unlawfully detaining and interrogating the minor child at school, and exhibited a
6 deliberate indifference to the rights of Plaintiffs ROBERT FISHER and PAULA
7 FISHER.

8
9 104. Moreover, as shown above, the unlawful seizure and custodial
10 interrogation of Plaintiffs ROBERT FISHER and PAULA FISHER's minor child
11 S.F. on February 21, 2017 by defendant HIGGINS was undertaken without
12 consent, probable cause, a protective custody warrant, or exigent circumstances
13 justifying interrogation of the minor child, and that the policies, practices,
14 customs, procedures, or inadequate training of law enforcement officers such as
15 defendants HIGGINS by COUNTY, were a contributing and driving force behind
16 the action of unlawfully detaining and interrogating the minor child at school, and
17 exhibited a deliberate indifference to the rights of Plaintiffs ROBERT FISHER
18 and PAULA FISHER, to protect their children and to their custody, society,
19 comfort and affection.

20 105. Furthermore, as shown above, the unlawful seizure and custodial
21 interrogation of plaintiffs' minor children S.F. and A.F. on February 23, 2017 by
22 defendants HIGGINS, ALLEN, PATTON, MILLARD and DOES 1 through 10,
23 inclusive, constituted intentional interference with Plaintiffs ROBERT FISHER
24 and PAULA FISHER's familial relations with their minor children, and the
25 removal of the children was done without consent, without probable cause, and
26 with a facially defective warrant for the minor child S.F., without a warrant for the
27 minor child A.F., and the absence exigent circumstances to justify the removal of
28 plaintiffs' minor children from plaintiffs' custody; and was also done with

1 deliberate indifference and malice to the familial rights of Plaintiffs ROBERT
2 FISHER and PAULA FISHER.

3 106. Furthermore, the continued detention of plaintiffs' minor children on
4 February 23, 2017 by defendants HIGGINS, ALLEN, PATTON, MILLARD and
5 DOES 1 through 10, pending a trial by the juvenile court, constituted intentional
6 interference with Plaintiffs ROBERT FISHER and PAULA FISHER's familial
7 relations with their minor children, and was also done with deliberate indifference
8 and malice to the familial rights of Plaintiffs ROBERT FISHER and PAULA
9 FISHER.

10 107. Defendants' continued detention of plaintiffs' children was
11 accomplished through the exercise of a fraud upon the court, and was in direct
12 contravention of state law that required the return of plaintiffs' children to them
13 under Cal. Welf & Inst Code §§ 309 and 319, and was done pursuant to and on
14 account of the policies, practices, customs, procedures, or inadequate training of
15 social workers and law enforcement officers by COUNTY.

16 108. Defendants' continued detention of plaintiffs' minor children and/or
17 their placement with persons other than plaintiffs, from the time of their removal
18 and through the period of time until they were returned to plaintiffs, was achieved
19 by the knowing presentation of false facts and the exclusion of exculpatory facts
20 and information to the Superior Court in the juvenile dependency Petition and
21 Detention Report, in violation of Cal. Gov't Code § 820.21.

22 109. The unreasonable seizure, removal, interrogation, and continued
23 detention of plaintiffs' minor children at the family home on February 23, 2017
24 deprived the Plaintiffs ROBERT FISHER and PAULA FISHER of their right to
25 Substantive Due Process of Law under the Fourteenth Amendment; to with their
26 right a parent-child relationship.

27 110. The unreasonable seizure of Plaintiffs ROBERT FISHER and
28

1 PAULA FISHER on February 26, 2017 by defendants HIGGINS, ALLEN,
2 RODRIGUEZ, and DOES 1 through 10, inclusive that resulted in the unlawful
3 removal of their children from plaintiffs' home and custody by defendants
4 HIGGINS, ALLEN, PATTON, MILLARD and DOES 1 through 10, inclusive,
5 and was done intentionally to, in part, achieve that very result, and was done with
6 deliberate indifference to and reckless disregard of Plaintiffs ROBERT FISHER
7 and PAULA FISHER's Child – Parent Relationship, and constituted outrageous
8 behavior that is shocking to the conscience.

9
10 111. Said outrageous conduct of the defendants, above-referenced, also
11 caused Plaintiffs ROBERT FISHER and PAULA FISHER to suffer substantial
12 special damages, including but not limited to, lost wages / profits and other
13 income that plaintiff would have earned / made / acquired while suspended from
14 his employment, loss of plaintiffs' good reputation as a 23-year career law
15 enforcement officer, bail amounts, attorneys' fees, the loss of three cell phones,
16 and other special damages; all in an amount to be shown at trial, in excessive of
17 \$10,000,000.00.

18 112. The actions of said defendants, and each of them, as complained of
19 herein, were committed maliciously, oppressively and in reckless disregard of
20 ROBERT FISHER's and PAULA FISHER's constitutional rights, sufficient for
21 an award of punitive / exemplary damages against said defendants, in an amount
22 to be proven at trial, in excess of \$10,000,000.00.

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FIFTH CAUSE OF ACTION
UNREASONABLE SEIZURE OF PROPERTY
UNDER THE FOURTH AMENDMENT

[42 U.S.C. § 1983]

**(By Plaintiffs ROBERT FISHER and PAULA FISHER Against Defendants
HIGGINS, ALLEN, RODRIGUEZ, PATTON, COSTA, COUNTY and
DOES 1 through 10, inclusive)**

113. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 112, inclusive, above, as though set forth in full herein.

114. As shown above, Plaintiffs ROBERT FISHER and PAULA FISHER had their personal property, including two cell phones, seized from them, without a warrant or probable cause or reasonable suspicion that plaintiffs had committed any crime, and without any belief by defendants, reasonable or otherwise, that said cell phones would contain evidence of a crime.

115. Moreover, said defendants also unlawfully took possession of the plaintiffs' cell phones because they contained evidence that showed some of the unlawful conduct by defendants complained of in this action.

116. When plaintiff ROBERT FISHER was released from jail after being unlawfully arrested and imprisoned for numerous hours until he could post bail in the amount of \$100,000.00, he was refused the return of his cell phone as a means to call someone to facilitate his departure from jail.

117. Moreover, Plaintiffs ROBERT FISHER and PAULA FISHER had their minor child's cell phone taken from them by the means of a facially defective warrant and had his cell phones taken from them in the absence of probable cause to believe that said phone contained evidence of a crime, as described above and below.

118. In total, three cell phones were unlawfully seized by defendants

1 HIGGINS, ALLEN, RODRIGUEZ, PATTON, COSTA and DOES 1 through 10,
2 inclusive from plaintiff, and said cell phones and their electronic information
3 (video recording(s) of the subject incident) concerning plaintiffs' false arrest
4 remain in the possession, custody and control of defendant COUNTY.

5 119. Defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON, COSTA
6 and DOES 1 through 10, inclusive, falsely arrested and imprisoned Plaintiffs
7 ROBERT FISHER and PAULA FISHER then forcibly seized / took three cell
8 phones from plaintiff on February 23, 2017.

9 120. More specifically, as shown above, defendants ALLEN and/or
10 PATTON and/or DOES 1 through 10, inclusive, authored material false
11 statements of fact / omissions of fact in his/their search warrant applications
12 before unlawfully entering and searching the home of Plaintiffs ROBERT
13 FISHER and PAULA FISHER, seizing their minor children, and seizing the cell
14 phone of their minor child S.F. while both children were at home alone.

15 121. The false arrest of Plaintiffs ROBERT FISHER and PAULA
16 FISHER by defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON, COSTA
17 and DOES 1 through 10, inclusive, constituted a seizure / an arrest of his person
18 and property under the Fourth Amendment to the United States Constitution.

19 122. However, defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON,
20 COSTA and DOES 1 through 10, inclusive, knew that plaintiff had not committed
21 any crime, yet nonetheless forcibly seized and took plaintiffs' cell phones from
22 him; all without a warrant, with a facially defective warrant as to plaintiffs' minor
23 child's cell phone, without consent or probable cause or reasonable suspicion that
24 plaintiff had committed any crime.

25 123. The actions of defendants HIGGINS, ALLEN, RODRIGUEZ,
26 PATTON, COSTA, COUNTY and DOES 1 through 10, inclusive, during said
27 February 23, 2017 incident complained of in this action, in forcibly taking
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1 plaintiffs' cell phones from him, and otherwise unlawful / unjustified taking of
2 plaintiffs' property constituted a violation of the plaintiffs' rights to be free from a
3 warrantless or facially defective warrant in the taking of his property in the
4 absence of a warrant or absence of a valid warrant or probable cause or reasonable
5 suspicion that there was criminality afoot, none of which existed, under the Fourth
6 Amendment to the United States Constitution.

7
8 124. As a direct and proximate result of the actions of defendants
9 HIGGINS, ALLEN, RODRIGUEZ, PATTON, COSTA, COUNTY and DOES 1
10 through 10, inclusive's unlawful seizure and search of the plaintiffs' cell phones
11 by said defendants, Plaintiffs ROBERT FISHER and PAULA FISHER: 1) were
12 substantially physically, mentally and emotionally injured, and suffered great
13 physical, mental and emotional injury, distress, pain and suffering; 2) incurred
14 medical and psychological costs, bills and expenses, 3) incurred attorney's fees,
15 bail amounts and associated litigation and other related costs, and 4) incurred the
16 loss of business wages, profits, and personalty (the loss of three cell phones), and
17 5) incurred other special and general damages and expenses, in an amount to be
18 proven at trial, in excess of \$10,000,000.00.

19 125. The actions of said defendants, and each of them, as complained of
20 herein, were committed maliciously, oppressively and in reckless disregard of
21 ROBERT FISHER's and PAULA FISHER's constitutional rights, sufficient for
22 an award of punitive / exemplary damages against said defendants, in an amount
23 to be proven at trial, in excess of \$10,000,000.00.

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SIXTH CAUSE OF ACTION
UNREASONABLE SEARCH OF PROPERTY
UNDER THE FOURTH AMENDMENT

[42 U.S.C. § 1983]

(By Plaintiff ROBERT FISHER Against Defendants PATTON and DOES 1 through 10, inclusive)

126. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in paragraphs 1 through 125, inclusive, above, as though set forth in full herein.

127. As shown above, on February 28, 2017 at 4:13 p.m. and 4:18 p.m., defendant PATTON and/or DOES 1 through 10, inclusive, went into / accessed plaintiff ROBERT FISHER's email account without a warrant and forwarded eight photographs to his email account (dpatton@sbcisd.org) in violation of plaintiffs' Fourth Amendment right to be free from warrantless invasions / searches / seizures of plaintiffs' electronic communications, in violation of Cal. Penal Code § 502 (Unauthorized access to computers, computer systems and computer data), in violation of the Electronic Communications Privacy Act (18 U.S.C. § 2510 *et seq.*) and in violation of the California Electronic Privacy Communications Act (Cal Penal Code § 1546 *et seq.*).

128. Said invasions of plaintiff ROBERT FISHER's electronic communications by defendant PATTON were done without a warrant or consent or probable cause or reasonable suspicion that plaintiff had committed any crime, in violation of plaintiff ROBERT FISHER's Fourth Amendment right to be free from such warrantless invasions of his personal electronic communications.

129. As a direct and proximate result of the actions of defendants PATTON and DOES 1 through 10, inclusive's unlawful seizure and search of the plaintiffs' electronic communications by said defendants, plaintiff ROBERT FISHER: 1) were substantially physically, mentally and emotionally injured, and

1 suffered great physical, mental and emotional injury, distress, pain and suffering;
 2 2) incurred medical and psychological costs, bills and expenses, 3) incurred
 3 attorney's fees, bail amounts and associated litigation and other related costs, and
 4 4) incurred the loss of business wages, profits, and personalty (the loss of three
 5 cell phones), and 5) incurred other special and general damages and expenses, in
 6 an amount to be proven at trial, in excess of \$10,000,000.00.

7 130. The actions of said defendants, and each of them, as complained of
 8 herein, were committed maliciously, oppressively and in reckless disregard of
 9 ROBERT FISHER's constitutional rights, sufficient for an award of punitive /
 10 exemplary damages against said defendants, in an amount to be proven at trial, in
 11 excess of \$10,000,000.00.
 12

13
 14 **SEVENTH CAUSE OF ACTION**
 15 **RETALIATION FOR PROTECTED SPEECH**
 16 **UNDER THE FIRST AMENDMENT**
 17 **[42 U.S.C. § 1983]**

18 **(By Plaintiffs ROBERT FISHER and PAULA FISHER Against Defendants**
 19 **HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1 through 10,**
 20 **inclusive)**

21 131. Plaintiffs hereby reallege and incorporate by reference the allegations
 22 set forth in paragraphs 1 through 130, inclusive, above, as if set forth in full
 23 herein.

24 132. During their detention at the hands of the above-named Defendants,
 25 Plaintiffs ROBERT FISHER and PAULA FISHER verbally protested to
 26 defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1 through
 27 10, inclusive.

28 133. During this detention, plaintiff ROBERT FISHER also asked if any
 of the aforementioned defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON

1 and DOES 1 through 10, inclusive had their belt recorders on and said defendants
2 told plaintiff that they did not. This prompted plaintiff ROBERT FISHER to
3 attempt to start recording the subject incident with his cell phone video recorder,
4 which angered defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON and
5 DOES 1 through 10, inclusive.

6 134. In retaliation for Plaintiffs' protests, and for Plaintiff ROBERT
7 FISHER's recording of defendants, defendants HIGGINS, ALLEN,
8 RODRIGUEZ, PATTON and DOES 1 through 10, inclusive, falsely arrested
9 plaintiffs on bogus charges, including felony charges of violation of Cal. Penal
10 Code §§ 273a(a) (felony child abuse) and 182 (conspiracy to commit a crime).

11 135. Furthermore, at the time and date of Plaintiffs ROBERT FISHER and
12 PAULA FISHER's arrests in this matter, the policy, custom, usage and practice of
13 the San Bernardino County Sheriff's Department was to arrest persons who
14 exercise their First Amendment rights by verbally challenging and verbally
15 protesting police action.
16

17 136. Furthermore, at the time and date of plaintiff ROBERT FISHER's
18 arrest in this matter, the policy, custom, usage and practice of the San Bernardino
19 County Sheriff's Department was to arrest persons such as plaintiff ROBERT
20 FISHER for video recording deputy sheriffs, to seize their cell phones, and to
21 subsequently destroy any video recorded evidence of the tortious and criminal
22 conduct of San Bernardino County Sheriff's Department deputy sheriffs.

23 137. Pursuant to the aforementioned policies, custom and practices,
24 Defendants seized Plaintiffs' cell phones in order to destroy any video recorded
25 evidence of Defendants' tortious and criminal conduct.

26 138. To this day, Defendants have not returned Plaintiff ROBERT
27 FISHER's cell phone or the video recordings which it contained at the time of its
28 seizure.

1 139. Persons arrested for bogus felony violations of crimes they did not
2 commit, such persons such as Plaintiffs ROBERT FISHER and PAULA FISHER,
3 are routinely and systematically retaliated against by San Bernardino County
4 Sheriff's Department deputy sheriffs and supervisors pursuant to said County's
5 policies, practices and customs by: (1) using excessive force in handcuffing
6 persons who verbally challenge and protest actions of said deputies, by (2)
7 imposing excessive bail for non-existent felonies without any evidence that
8 persons who verbally challenge and protest actions of said deputies have
9 committed crimes, by (3) keeping persons who verbally challenge and protest
10 actions of said deputies, locked up in a jail cell for many hours.

11 140. Accordingly, pursuant to and because of such policies, customs and
12 practices of the San Bernardino County Sheriff's Department, ROBERT FISHER,
13 was retaliated against by defendants (1) used excessive force upon plaintiff when
14 they handcuffed him, (2) imposed excessive bail upon plaintiff, (3) kept plaintiff
15 locked up in a jail cell for many hours, and (4) made false statements of fact to
16 plaintiffs' employer to procure an internal affairs investigation of the plaintiff with
17 the intent to initiate disciplinary proceedings against the plaintiff and/or
18 termination of plaintiffs' employment with the City of Banning Police
19 Department.; all for his verbal protest to and challenge to the actions of the
20 defendants against the plaintiff.

21 141. As a direct and proximate result of the actions of defendants
22 HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1 through 10, inclusive,
23 Plaintiffs ROBERT FISHER and PAULA FISHER: 1) were substantially
24 physically, mentally and emotionally injured, and suffered great physical, mental
25 and emotional injury, distress, pain and suffering; 2) incurred medical and
26 psychological costs, bills and expenses, 3) incurred attorney's fees, bail amounts
27 and associated litigation and other related costs, and 4) incurred the loss of
28

1 business wages, profits, and personalty (the loss of three cell phones), and 5)
 2 incurred other special and general damages and expenses, in an amount to be
 3 proven at trial, in excess of \$10,000,000.00.

4 142. The actions of said defendants, and each of them, as complained of
 5 herein, were committed maliciously, oppressively and in reckless disregard of
 6 ROBERT FISHER's and PAULA FISHER's constitutional rights, sufficient for
 7 an award of punitive / exemplary damages against said defendants, in an amount
 8 to be proven at trial, in excess of \$10,000,000.00.

10 **EIGHTH CAUSE OF ACTION**
 11 **MALICIOUS PROSECUTION**
 12 **UNDER THE FOURTH AND FOURTEENTH AMENDMENT**
 13 **[42 U.S.C. § 1983]**
 14 **(By Plaintiff PAULA FISHER Against Defendants HIGGINS, ALLEN,**
 15 **COSTA, and DOES 1 through 10, inclusive)**

16 143. Plaintiffs hereby reallege and incorporate by reference the allegations
 17 set forth in paragraphs 1 through 142, inclusive, above, as if set forth in full
 18 herein.

19 144. Based upon the aforementioned events, Defendants HIGGINS,
 20 ALLEN, COSTA and/or DOES 1 through 10 drafted investigatory reports in
 21 which each Defendant intentionally and falsely alleged, and omitted material facts
 22 for purposes of alleging, that plaintiff PAULA FISHER had committed criminal
 23 acts; to wit violations of Cal. Pen. Code §§ 422(a) (criminal threats) and 273(b)
 24 (willful cruelty to child).

25 145. At all times described herein, Defendants HIGGINS, ALLEN,
 26 COSTA and/or DOES 1 through 10 lacked probable cause to believe that plaintiff
 27 PAULA FISHER had committed crimes in violation of Cal. Pen. Code §§ 422(a),
 28 273(b), or any other law.

1 146. Defendants HIGGINS, ALLEN, COSTA and/or DOES 1 through 10
2 forwarded the aforementioned investigatory reports to the San Bernardino County
3 District Attorney's Office for the purpose of causing plaintiff PAULA FISHER to
4 be criminally charged without probable cause.

5 147. On October 2, 2017, based upon the police reports authored by
6 Defendants HIGGINS, ALLEN, COSTA and/or DOES 1 through 10, the San
7 Bernardino County District Attorney's Office charged PAULA FISHER under
8 Cal. Pen. Code §§ 422(a) (criminal threats) and 273(b) (willful cruelty to child).

9 148. On August 3, 2018, the San Bernardino County Superior Court, on
10 motion of the District Attorney's Office, dismissed all criminal charges against
11 PAULA FISHER.

12 149. Thus, because Defendants HIGGINS, ALLEN, COSTA and/or
13 DOES 1 through 10 maliciously caused plaintiff PAULA FISHER to be
14 prosecuted without probable cause, and because that prosecution was finally and
15 favorably terminated in favor of plaintiff PAULA FISHER, the Defendants'
16 actions constituted a violation of PAULA FISHER's Constitutional rights under
17 the Fourth and Fourteenth Amendments to be free from malicious criminal
18 prosecution.

19 150. As a direct and proximate result of the actions of Defendants
20 HIGGINS, ALLEN, COSTA, and DOES 1 through 10, inclusive, plaintiff
21 PAULA FISHER: 1) were substantially physically, mentally and emotionally
22 injured, and suffered great physical, mental and emotional injury, distress, pain
23 and suffering; 2) incurred medical and psychological costs, bills and expenses, 3)
24 incurred attorney's fees, bail amounts and associated litigation and other related
25 costs, and 4) incurred the loss of business wages, profits, and personalty (the loss
26 of three cell phones), and 5) incurred other special and general damages and
27 expenses, in an amount to be proven at trial, in excess of \$10,000,000.00.
28

1 exercising his constitutional rights.

2 155. The actions of defendant deputy sheriffs HIGGINS and/or ALLEN
3 and/or RODRIGUEZ, and/or PATTON and/or DOES 1 through 10, inclusive,
4 above-described, were done in retaliation for plaintiffs' exercise of their First
5 Amendment rights to freedom of speech and to petition the government for
6 redress of grievances, his recording of said defendant deputy sheriffs, and to chill,
7 deter and prevent further verbal protests and complaints by plaintiffs to said
8 defendant deputy sheriffs about their mistreatment of the plaintiff.

9 156. Moreover, as shown above, said defendant deputy sheriffs HIGGINS
10 and/or ALLEN and/or RODRIGUEZ, and/or PATTON and/or DOES 1 through
11 10, inclusive, used unreasonable force upon the Plaintiffs ROBERT FISHER and
12 PAULA FISHER; said use of unreasonable force in itself being a violation of
13 Section 52.1.

14 157. Said defendant deputy sheriffs HIGGINS and/or ALLEN and/or
15 RODRIGUEZ, and/or PATTON and/or DOES 1 through 10, inclusive, interfered
16 with, and/or attempted to interfere with, by use of threats, intimidation, and
17 coercion, the exercise or enjoyment by plaintiffs of the rights secured by the
18 Constitution and laws of the United States, and of the rights secured by the
19 California Constitution and otherwise by California law, in violation of California
20 Civil Code § 52.1.

21 158. Said defendants HIGGINS and/or ALLEN and/or RODRIGUEZ,
22 and/or PATTON and/or DOES 1 through 10, inclusive, JOHNSON and DOES 1
23 through 10 are liable to plaintiffs for said violations of their constitutional rights,
24 pursuant to California Civil Code §52.1, and California Government Code §§
25 815.2(a), 815.6, 820, 820.8.

26 159. As a direct and proximate result of the actions of defendants
27 HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1 through 10, inclusive,
28

1 Plaintiffs ROBERT FISHER and PAULA FISHER: 1) were substantially
 2 physically, mentally and emotionally injured, and suffered great physical, mental
 3 and emotional injury, distress, pain and suffering; 2) incurred medical and
 4 psychological costs, bills and expenses, 3) incurred attorney's fees, bail amounts
 5 and associated litigation and other related costs, and 4) incurred the loss of
 6 business wages, profits, and personalty (the loss of three cell phones), and 5)
 7 incurred other special and general damages and expenses, in an amount to be
 8 proven at trial, in excess of \$10,000,000.00.

9 160. In addition, as a result of the actions of said defendants in violation of
 10 the plaintiffs' rights under Cal. Civil Code § 52.1, the plaintiffs are entitled to an
 11 award of treble compensatory damages against all defendants, and each of them in
 12 this action.

13 161. The actions of said defendants, and each of them, as complained of
 14 herein, were committed maliciously, oppressively and in reckless disregard of
 15 ROBERT FISHER's and PAULA FISHER's constitutional rights, sufficient for
 16 an award of punitive / exemplary damages against said defendants, in an amount
 17 to be proven at trial, in excess of \$10,000,000.00.

18
 19
 20 **TENTH CAUSE OF ACTION**
 21 **FALSE ARREST / FALSE IMPRISONMENT**
 22 **UNDER CALIFORNIA STATE LAW**
 23 **(By Plaintiffs ROBERT FISHER and PAULA FISHER Against Defendants**
 24 **HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1 through 10,**
 25 **inclusive)**

26 162. Plaintiffs hereby reallege and re-incorporate by reference the
 27 allegations set forth in paragraphs 1 through 161, inclusive, above, as if set forth
 28 in full herein.

163. As complained of above, Plaintiffs ROBERT FISHER and PAULA

1 FISHER were unlawfully seized and arrested by defendants HIGGINS, ALLEN,
2 RODRIGUEZ, PATTON and DOES 1 through 10, inclusive, on February 26,
3 2017.

4 164. As complained of above, said defendants HIGGINS, ALLEN,
5 RODRIGUEZ, PATTON and DOES 1 through 10, inclusive, had: (1) neither a
6 warrant nor probable cause to believe that Plaintiffs ROBERT FISHER and
7 PAULA FISHER had committed a crime, nor reasonable suspicion of criminality
8 afoot about Plaintiffs ROBERT FISHER and PAULA FISHER; (2) Plaintiffs
9 were actually harmed by said conduct of Defendants HIGGINS, ALLEN,
10 RODRIGUEZ, PATTON and DOES 1 through 10, inclusive; and (3) the conduct
11 of Defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1
12 through 10, inclusive, was substantial factor in causing Plaintiffs ROBERT
13 FISHER and PAULA FISHER harm.

14 165. Defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON and
15 DOES 1 through 10, inclusive, are liable to Plaintiffs ROBERT FISHER and
16 PAULA FISHER for their false arrests / false imprisonments pursuant to Cal.
17 Gov't Code §§ 815.2(a), 815.6, 820, 820.4 and 820.8.

18 166. As a direct and proximate result of the actions of defendants
19 HIGGINS, ALLEN, RODRIGUEZ, PATTON and DOES 1 through 10, inclusive,
20 Plaintiffs ROBERT FISHER and PAULA FISHER: 1) were substantially
21 physically, mentally and emotionally injured, and suffered great physical, mental
22 and emotional injury, distress, pain and suffering; 2) incurred medical and
23 psychological costs, bills and expenses, 3) incurred attorney's fees, bail amounts
24 and associated litigation and other related costs, and 4) incurred the loss of
25 business wages, profits, and personalty (the loss of three cell phones), and 5)
26 incurred other special and general damages and expenses, in an amount to be
27 proven at trial, in excess of \$10,000,000.00.
28

1 167. The actions of said defendants, and each of them, as complained of
 2 herein, were committed maliciously, oppressively and in reckless disregard of
 3 ROBERT FISHER's and PAULA FISHER's constitutional rights, sufficient for
 4 an award of punitive / exemplary damages against said defendants, in an amount
 5 to be proven at trial, in excess of \$10,000,000.00.

6
 7 **ELEVENTH CAUSE OF ACTION**
 8 **CONVERSION**

9 **UNDER CALIFORNIA STATE LAW**

10 **(By Plaintiffs ROBERT FISHER and PAULA FISHER Against Defendants**
 11 **HIGGINS, ALLEN, RODRIGUEZ, PATTON, COUNTY and DOES 1**
 through 10)

12 168. Plaintiffs hereby reallege and incorporate by reference the allegations
 13 set forth in paragraphs 1 through 167, inclusive, above, as if set forth in full
 14 herein.

15 169. As described above, Plaintiffs ROBERT FISHER and PAULA
 16 FISHER owned, possessed and had a right to possess their said personalty /
 17 property, three cell phones and the electronic information/data contained therein.

18 170. Defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON,
 19 COUNTY and DOES 1 through 10, inclusive, intentionally and substantially
 20 interfered with plaintiffs' property by taking plaintiffs' cell phones and the
 21 electronic information/data contained thereon, took possession of said property,
 22 denied plaintiff access to said property, and refused to return said property after
 23 plaintiffs had demanded their return from defendants. To this day, said defendants
 24 have refused to return the three cell phones stolen from Plaintiffs ROBERT
 25 FISHER and PAULA FISHER.

26 171. Plaintiffs did not consent to the taking of their property and were
 27 harmed by such taking of their property.
 28

1 172. The conduct of defendants HIGGINS, ALLEN, RODRIGUEZ,
2 PATTON, COUNTY and DOES 1 through 10, inclusive, above-described, was a
3 substantial factor in causing plaintiffs' harm and constituted an unlawful
4 conversion of plaintiffs' property, under California state law.

5 173. Defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON,
6 COUNTY and DOES 1 through 10, inclusive, and each of them, are liable to
7 ROBERT FISHER and PAULA FISHER for said unlawful conversion of
8 plaintiffs' property, pursuant to Cal. Government Code §§ 815.2(a), 815.6, 820,
9 820.8 and otherwise pursuant to the common-law.

10 174. As a direct and proximate result of the actions of defendants
11 HIGGINS and/or ALLEN and/or RODRIGUEZ and/or PATTON and/or DOES 1
12 through 10, inclusive, Plaintiffs ROBERT FISHER and PAULA FISHER: 1) were
13 substantially physically, mentally and emotionally injured, and suffered great
14 physical, mental and emotional injury, distress, pain and suffering; 2) incurred
15 medical and psychological costs, bills and expenses, 3) incurred attorney's fees,
16 bail amounts and associated litigation and other related costs, and 4) incurred the
17 loss of business wages, profits, and personalty (the loss of three cell phones), and
18 5) incurred other special and general damages and expenses, in an amount to be
19 proven at trial, in excess of \$10,000,000.00.

20 175. The actions of said defendants, and each of them, as complained of
21 herein, were committed maliciously, oppressively and in reckless disregard of
22 ROBERT FISHER's and PAULA FISHER's constitutional rights, sufficient for
23 an award of punitive / exemplary damages against said defendants, in an amount
24 to be proven at trial, in excess of \$10,000,000.00.

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TWELFTH CAUSE OF ACTION
INVASION OF PRIVACY
UNDER THE CALIFORNIA CONSTITUTION AND CALIFORNIA
STATE LAW
(By Plaintiff ROBERT FISHER Against Defendant PATTON and DOES 1
through 10, inclusive)

176. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in paragraphs 1 through 175, inclusive, above, as if set forth in full herein.

177. As shown above, on February 28, 2017 at 4:13 p.m. and 4:18 p.m., defendant PATTON and/or DOES 1 through 10, inclusive, accessed without consent, authorization, a warrant or probable cause, plaintiff ROBERT FISHER's email account and forwarded eight photographs to his San Bernardino County Sheriff's Department email account (dpatton@sbcisd.org) in violation of plaintiffs' Fourth Amendment right to be free from warrantless invasions of plaintiffs' electronic communications, and in violation of California Penal Code § 502 (Unauthorized access to computers, computer systems and computer data); which electronic communications are also protected by the Electronic Communications Privacy Act (18 U.S.C. § 2510 *et seq.*) and the California Electronic Privacy Communications Act (Cal Penal Code § 1546 *et seq.*).

178. At the time of the unauthorized access into plaintiff ROBERT FISHER's email account, defendant PATTON and/or DOES 1 through 10, inclusive, was acting under the color of state law, in his official capacity as a San Bernardino County Sheriff's Department deputy sheriff.

179. Said unauthorized access by defendant PATTON and/or DOES 1 through 10, inclusive, constitutes two felonies pursuant to California Penal Code § 502(d)(1), and plaintiff ROBERT FISHER was sufficiently damaged by said intrusions and unauthorized access into his personal email by having felonies

1 committed against him without a warrant, consent, authorization, probable cause
2 or reasonable suspicion of criminality afoot of plaintiff.

3 180. Thus, under the facts set forth above, Plaintiff ROBERT FISHER had
4 a reasonable expectation of privacy in his e-mail account.

5 181. As set forth above, Defendants intentionally intruded upon the
6 expectation of privacy which plaintiff ROBERT FISHER enjoyed in his e-mail
7 account.

8 182. Defendants' intrusion into plaintiff's e-mail account would be
9 offense to a reasonable person.

10 183. Defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON,
11 COUNTY and DOES 1 through 10, inclusive, and each of them, are liable to
12 ROBERT FISHER for said unlawful invasion of plaintiffs' privacy, pursuant to
13 Cal. Government Code §§ 815.2(a), 815.6, 820, 820.8 and otherwise pursuant to
14 the common-law.
15

16 184. As a direct and proximate result of the actions of defendant PATTON
17 and/or DOES 1 through 10, inclusive, plaintiff ROBERT FISHER was: 1)
18 substantially physically, mentally and emotionally injured, and suffered great
19 physical, mental and emotional injury, distress, pain and suffering and loss of
20 reputation and good will within his police department; 2) incurred medical and
21 psychological costs, bills and expenses, 3) incurred attorney's fees, bail amounts
22 and associated litigation and other related costs, and 4) incurred the loss of
23 business wages, profits, and personalty (the loss of three cell phones), and 5)
24 incurred other special and general damages and expenses, in an amount to be
25 proven at trial, in excess of \$10,000,000.00.

26 185. Defendants' conduct was a substantial factor in causing the
27 aforementioned harms to plaintiff ROBERT FISHER.

28 186. The actions of said defendants, and each of them, as complained of

herein, were committed maliciously, oppressively and in reckless disregard of ROBERT FISHER's constitutional rights, sufficient for an award of punitive / exemplary damages against said defendants, in an amount to be proven at trial, in excess of \$10,000,000.00.

THIRTEENTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
UNDER CALIFORNIA STATE LAW
(By Plaintiffs ROBERT FISHER and PAULA FISHER Against All Defendants)

187. Plaintiffs hereby re-allege and re-incorporate by reference the allegations set forth in paragraphs 1 through 186, inclusive, above, as if set forth in full herein.

188. Defendants HIGGINS, ALLEN, PATTON, COSTA, RODRIGUEZ, MILLARD, CRISTOBAL, COUNTY and DOES 1 through 10, inclusive, and each of them, knew and/or should have known that plaintiffs ROBERT FISHER and PAULA FISHER were susceptible to suffering severe emotional distress from defendants' actions as complained of above and herein.

189. Moreover, the conduct of said defendants, for all of the incidents complained of herein, were outrageous and not the type of conduct condoned in a civilized society.

190. Defendants HIGGINS, ALLEN, RODRIGUEZ, PATTON, COUNTY and DOES 1 through 10, inclusive, and each of them, are liable to ROBERT FISHER and PAULA FISHER pursuant to Cal. Government Code §§ 815.2(a), 815.6, 820, 820.8 and otherwise pursuant to the common-law.

191. As a direct and proximate result of the actions of defendant HIGGINS, ALLEN, PATTON, COSTA, RODRIGUEZ, MILLARD, CRISTOBAL, COUNTY and DOES 1 through 10, inclusive, Plaintiffs ROBERT

FISHER and PAULA FISHER: 1) were substantially physically, mentally and emotionally injured, and suffered great physical, mental and emotional injury, distress, pain and suffering and loss of reputation and good will within his police department; 2) incurred medical and psychological costs, bills and expenses, 3) incurred attorney's fees, bail amounts and associated litigation and other related costs, and 4) incurred the loss of business wages, profits, and personalty (the loss of three cell phones), and 5) incurred other special and general damages and expenses, in an amount to be proven at trial, in excess of \$10,000,000.00.

192. The actions by said defendants were committed maliciously and oppressively and constituted despicable conduct; sufficient for an award of punitive / exemplary damages against all defendants and each of them, save defendant COUNTY, in an amount to be proven at trial in excess of \$5,000,000.00.

WHEREFORE, plaintiff prays for judgment as follows:

a) For a judgment against all defendants for compensatory damages in an amount in excess of \$10,000,000.00; trebled to \$30,000,000.00⁶;

b) For a judgment against all defendants, save defendant COUNTY for punitive damages in an amount in excess of \$10,000,000.00;

c) For an award of reasonable attorney's fees and costs;

d) For a trial by jury; and

e) For such other and further relief as this honorable court deems just and equitable.

/s/ Jerry L. Steering

JERRY L. STEERING

Attorney for Robert Fisher and Paula Fisher

⁶ Pursuant to plaintiffs' Section 52.1 claim.

PROOF OF SERVICE

I declare that I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within cause, and my business address is 4063 Birch Street, Suite 100, Newport Beach, CA 92660.

On, September 29, 2018, I served the attached:

THIRD AMENDED COMPLAINT

Risa Su Christensen Wagner and Pelayes LLP 1325 Spruce Street Suite 200 Riverside, CA 92507	Dennis E Wagner Wagner and Pelayes LLP 1325 Spruce Street Suite 200 Riverside, CA 92507
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() BY PERSONAL SERVICE

(X) BY EMAIL VIA E-FILING

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. This the 29th day of September 2018, at Newport Beach, California.

s/ Brenton W. Aitken Hands
BRENTON W. AITKEN HANDS